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SENATE

REPORT
101-330

PROVIDING FOR THE RESTORATION OF FEDERAL RECOGNITION TO THE PONCA TRIBE OF NEBRASKA, AND FOR OTHER PURPOSES

JUNE 12 (legislative day, JUNE 11), 1990.—Ordered to be printed

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Mr. INOUYE, from the Committee on Indian Affairs, submitted the following

REPORT

[To accompany S. 1747]

The Select Committee on Indian Affairs to which was referred the bill (S. 1747) to provide for the restoration of Federal recognition to the Ponca Tribe of Nebraska, and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

PURPOSE

The purpose of S. 1747 is to restore Federal recognition to the Northern Ponca Tribe of Indians in the State of Nebraska.

On July 1, 1952, the House of Representatives passed a resolution directing the Committee on Interior and Insular Affairs to conduct a full investigation on terminating the Federal relationship between the United States government and the Indian tribes. That Committee in turn directed a special subcommittee and the Bureau of Indian Affairs to determine the possibility of success in terminating certain tribes. On August 1, 1953, Congress adopted House Concurrent Resolution 108 which set forth the congressional policy of termination which would prevail for the next decade.

The Federal relationship with the Ponca Tribe was included on that list recommended for termination by the special subcommittee and the BIA. Congress terminated the Federal relationship between the United States government and the Northern Ponca on September 5, 1962 (76 Stat. 429; 25 U.S.C. 971-980). The termination took effect in 1966.

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In the 100th Congress, the congressional policy of termintion was expressly repudiated and repealed (P.L. 100-297). S. 1747, the "Ponca Restoration Act", would restore the relationship between the Federal government and the Northern Ponca and once again extend to the Northern Ponca Tribe all the rights and responsibilities possessed by it prior to 1962. Restoration of the Federal relationship between the Ponca tribal government and the Federal government is a necessary step in correcting an historic injustice.

BACKGROUND

Dr. Elizabeth S. Grobsmith, Associate Professor of Anthropology at the University of Nebraska in Lincoln has graciously provided the Committee with the fruits of extensive research conducted on the history of the Northern Ponca Tribe:

After migrating westward away from European colonization, the Ponca ultimately came to settle upon the central plains. The area which came to be traditionally inhabited by the Ponca stretched from the west bank of the Missouri River near present Sioux City, Iowa, to the southern boundary, the mouth of the Platte River in Nebraska. To the west, the Ponca hunted in and west of the Black Hills in present South Dakota; the northern boundary approximated the mouth of the White River in South Dakota. Until termination, tribal population and activity centered around Ponca Creek and the Niobrara River in Knox County, Nebraska.

The native language of the Ponca, along with the Omaha, Osage, Kansa, and Quapaw, derives from that of the Dhegiha subgroup of the Siouan speaking tribes, including the Chiwere subgroup of Winnebago, Iowa, Oto, and Missouria. The Ponca refer to themselves as "Ponka", which appears to be an aboriginal word meaning "sacred head".

The Ponca entered into four treaties with the Federal government, the first two being treaties of friendship, in 1817 and 1825, and the latter two including provisions for cessions of land, in 1858 and 1865. In 1876, the general appropriation bill in the Congress authorized the Secretary of the Interior to remove the Ponca to Indian Territory of Oklahoma. Eight Ponca chiefs were selected to visit the Indian Territory and to select a new reservation there. These eight chiefs did go to the Indian Territory, but upon seeing the area they refused to select a site and requested to return North. Their request denied, they departed for the North anyway. An order was issued on April 12, 1877, for the Ponca's removal from their aboriginal homelands, which was effected on April 30th and May 16th of that year, when the Ponca were removed to the Indian Territory.

In the late 1870s the death of Chief Standing Bear's son and his request to be buried in his homeland renewed the fervor of the Ponca to return to their aboriginal home on the Niobrara River in Nebraska. Upon reaching the Omaha reservation in the spring of 1879, 66 Ponca led by Chief Standing Bear were taken into custody by General George Crook. A handful of citizens and attorneys concerned about the Ponca's detainment led to the famous trial of Standing Bear.

A full Senate investigation determined that the Ponca should be allowed to stay in their aboriginal land and be given individual allotments. Those Ponca who chose to remain in Indian Territory numbered approximately 600. Those who chose to resettle their homeland, numbering approximately 225, became the Northern Ponca Tribe.

In April of 1962, Senator Church introduced a bill calling for the division of assets of the Southern and Northern bands of Ponca and for the termination of the Federal relationship with the Northern Ponca. On October 18, 1966, the bill effected the removal of 442 Northern Ponca from the tribal rolls, dispossessing them of 834 acres, and ending their entitlement to special status guaranteed in their treaties with the Federal government.

LEGISLATIVE HISTORY

On October 11, 1989, S. 1747 was introduced by Senator Exon, for himself and Senator Kerrey, both of Nebraska, and was referred to the Select Committee on Indian Affairs. A hearing was held on the bill on April 23, 1990, which revealed support for the bill by the other federally recognized tribes in Nebraska, by the State of Nebraska, and numerous university, school, community, and church organizations.

COMMITTEE RECOMMENDATION AND TABULATION OF VOTE

On May 1, 1990, the Select Committee on Indian Affairs, in an open business session, considered S. 1747 and the bill was ordered reported as amended with a recommendation that the bill, as amended and reported, be passed by the Senate.

SECTION-BY-SECTION ANALYSIS

Section 1

This section cites this Act as the "Ponca Restoration Act".

Section 2

This section defines the following terms for the purposes of this Act: "Tribe", "Secretary", "Interim Council", "Member", and "State".

Section 3

This section restores Federal recognition to the Northern Ponca Tribe and provides that all laws of general application to Indians shall be applicable to that tribe.

Section 4

Subsection (a) provides that all rights and privileges of the Tribe and its members which were lost or diminished under Public Law 87-629 which terminated the Federal relationship with the Ponca are hereby restored.

Subsection (b) provides that nothing in this Act diminishes any existing rights or privileges of the Tribe or its members.

Subsection (c) requires the Secretary to accept any land transferred to the Secretary in trust in the name of the United States for the benefit of the Tribe.

Subsection (d) provides that nothing in this Act shall alter or affect any existing rights or obligations with respect to property, contracts, hunting, fishing, gathering, water or taxes.

Section 5

This section, as amended, provides that the Tribe and its members within certain named counties in Nebraska and South Dakota shall be eligible for all services and benefits that are provided by the Federal Government to Indians because of their status as members of Federally recognized tribes upon the enactment of this Act without regard to the existence of a reservation. The Committee understands that the eligibility of the Tribe and its members for Federal services will not be affected by the Tribe's acquisition of trust lands.

Section 6

This section provides that until a new tribal constitution is adopted, the Tribe's governing body shall be an Interim Council.

Section 7

Subsection (a) directs the Interim Council to ensure the continuing accuracy of the tribal membership roll until a constitution is adopted.

Paragraph (1) of subsection (b), as amended, provides that until a tribal constitution is adopted, a person shall be placed on the membership roll if the individual is living, is not a member of another Federally recognized tribe, and is listed on the tribal membership roll of June 18, 1965, is entitled to be included on that membership roll, or is a direct lineal descendant of an individual on or entitled to be on that roll.

Paragraph (2) of subsection (b) provides that any individual who is excluded from the tribal roll by the Interim Council may appeal to the Secretary and the Interim Council shall enroll any individual who the Secretary determines to be eligible for membership.

Subsection (c) provides that after the adoption of a tribal constitution, said constitution, shall govern membership in the Tribe.

Section 8

Subsection (a) provides that upon completion of the tribal membership roll and upon written request by the Interim Council, or within one year from the date of enactment of this Act, the Secretary shall conduct an election for the purpose of adopting a constitution for the Tribe. Except as provided in this Section, the election shall be conducted as provided in Section 16 of the Indian Reorganization Act of 1934.

Subsection (b) provides that not later than 120 days after the Tribe adopts a constitution, the Secretary shall conduct an election for the purpose of electing tribal officials in accordance with this Act except to the extent said procedures conflict with the tribal constitution, in which event the procedures set forth in the tribal constitution shall govern.

Subsection (c), as amended, provides that the Tribe shall be treated as a tribal government for the purposes of the Internal Revenue Code of 1986.

Section 9

This section provides that the Secretary shall prescribe such regulations as may be necessary to carry out the provisions of this Act.

Section 10

Subsection (a) provides that the Secretary shall assist the Tribe in developing an economic development plan, to establish such a plan, and upon approval by the Tribe, submit such plan to the Congress within two years from the date of enactment.

Subsection (b) provides that the Secretary shall notify and consult with State and local governments with respect to the economic development plan.

Subsection (c) provides that any such economic development plan shall provide that real property acquired for or by the Tribe shall be taken into trust for the Tribe upon the Tribe's request, subject to all existing legal rights and interests in such land.

Subsection (d) provides that the Secretary shall include in the economic development plan the names of each individual consulted, summarizing the consultation, and providing any written comments or documentation submitted to the Secretary.

COST AND BUDGETARY CONSIDERATIONS

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 9, 1990.

Hon. DANIEL K. INOUYE,
Chairman, Select Committee on Indian Affairs,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed S. 1747, the Ponca Restoration Act, as ordered reported by the Senate Select Committee on Indian Affairs on May 1, 1990.

S. 1747 would grant federal recognition to the Ponca Tribe of Nebraska. Although the bill does not specifically authorize the appropriation of funds, it would make all members of the tribe eligible for all services and benefits available to federally recognized Indian tribes. Thus, while no additional expenditures are mandated by the bill, relevant federal agencies would be required to include members of the tribe among those eligible for benefits and may seek additional funds in order to provide such benefits. CBO estimates that the average annual cost of services and benefits provided nationally is about $3,000 per eligible Indian. If this average is applicable to the Ponca Tribe, the annual cost would be $1.2 million.

The bill would also require that the Secretary of the Interior prepare an economic development plan in conjunction with the tribe. Based on information from the Bureau of Indian Affairs, we estimate that this would cost about $100,000 per year in fiscal years 1991 and 1992.

Under S. 1747, the tribe may turn over land to be held in trust by the Secretary of the Interior. Since land held in trust becomes non-taxable, this bill could result in some loss of property tax revenues to state and local governments. Currently, the tribe's holdings are minimal and we do not anticipate a significant revenue loss.

However, it is not possible to predict the impact of future revenue losses, since they would result from the voluntary transfer of land which has not yet been purchased.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Marta Morgan, who can be reached at 226-2860.

Sincerely,

ROBERT D. REISCHAUER, *Director.*

REGULATORY IMPACT STATEMENT

Paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate requires each report accompanying a bill to evaluate the regulatory and paperwork impact that would be incurred in carrying out the bill. The Committee believes that S. 1747 will have some regulatory or paperwork impact.

EXECUTIVE COMMUNICATIONS

The following communication was received by the Committee from the Executive Branch with respect to S. 1747:

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, DC, April 30, 1990.

Hon. DANIEL K. INOUYE,
Chairman, Select Committee on Indian Affairs,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: This is to provide you with our views on S. 1747, the "Ponca Restoration Act."

We have no objection to the enactment of S. 1747 if the Ponca Tribe has specific data to verify that the six restoration criteria discussed below are met. It is our understanding that the Ponca Tribe is in the process of providing information to the Bureau of Indian Affairs regarding the six restoration criteria. Once we have reviewed this material, we will be happy to provide the Committee with our findings.

Enactment of S. 1747 would restore to the Ponca Tribe of Nebraska and its members all rights and privileges lost under the Act of September 5, 1962 (76 Stat. 429; 25 U.S.C. 971-980). S. 1747 would restore Federal recognition to the Ponca Tribe and thereby restore their eligibility for services and benefits provided by the Departments of the Interior and Health and Human Services, and other Federal agencies which provide services and benefits to tribes recognized by the Federal Government.

S. 1747 would also establish an interim council to represent the tribe until the tribal governing body is established under a tribal constitution to be adopted by the tribal members. The constitution would be in accordance with section 16 of the Indian Reorganization Act of June 18, 1934, as amended.

Further, S. 1747 would establish membership criteria until the constitution is adopted which include: (a) those persons listed on the final membership roll of June 18, 1965; (b) those persons entitled to be listed on the final membership roll but not listed; and (c)

those persons who are lineal descendants of both categories above. Following its adoption, the constitution would govern membership.

Under S. 1747, the tribe's hunting, fishing, trapping, gathering, or water rights would not be affected. While the tribe does not seek re-establishment of its reservation under this bill, the Secretary is authorized to accept any real property that is transferred to the Secretary for the benefit of the tribe, but such property would continue to be subject to all existing rights including liens and outstanding taxes. Once land is taken in trust for the tribe, it would be exempt from future local, State, and Federal taxes and would provide a focal point for tribal activities and identity. The Secretary of the Interior is to negotiate with the tribe's governing body to establish a plan for the economic self-sufficiency of the tribe and submit the plan to Congress after approval by the governing body and within two years of enactment of the bill.

Since the Bureau has maintained no contact with the Ponca Tribe following its termination in 1962, we have no information that would enable us to determine whether the Ponca meet these criteria. (At the time of termination only 45 Poncas were left on the reservation in Knox and Boyd Counties, and much of the reservation was leased to non-Indians. The names of 442 persons appeared on the final roll of the Ponca Tribe approved by the Secretary of the Interior pursuant to the 1962 termination act.)

The Administration has six criteria to be considered in determining whether to support the restoration of a terminated tribe. These criteria are:

1. There exists an ongoing, identifiable community of Indians who are members of the formerly recognized tribe or who are their descendants;
2. The tribe is located in the vicinity of the former reservation;
3. The tribe has continued to perform self-governing functions either through elected representatives or in meetings of their general membership;
4. There is widespread use of their aboriginal language, customs, and culture;
5. There has been marked deterioration in their socioeconomic conditions since termination; and
6. Their conditions are more severe than in adjacent rural areas or in other comparable areas within the State. It is generally recognized that termination was an ill-advised policy. No commentator on termination has documented an instance where an Indian tribe has benefited from cessation of Federal recognition and loss of their special status as Indians. In almost every case of termination, there has been deleterious effects when measured by economic and health standards. However, documentation of these assertions is difficult because the Federal responsibility for Indian tribes ended upon termination. Therefore, follow-up studies on the conditions of terminated tribes were seldom made. However, the legislative histories of bills to restore the Menominee in Wisconsin and the Klamath and the Siletz in Oregon to Federal recognition strongly indicate social deterioration of these tribes after termination. We

have no reason not to believe that the same deterioration of socioeconomic conditions exists with the Ponca.

Since termination is no longer Federal policy and Congress has restored to Federal status most of the previously terminated tribes (the Menominee; Ottawa; Peoria; Wyandotee; Siletz; Paiute; Grand Ronde; Confederated Tribes of Coos, Lower Umpqua and Siouslaw; Klamath; Alabama and Coushatta; Coquille), in terms of equity there is little basis for leaving those terminated tribes without a Federal relationship (if they desire it restored) while the large majority of tribes still enjoy their special status as Indians. No discernible distinctions appear between those tribes which were terminated and those which were not.

If the Ponca have specific data that address the six restoration criteria and that verifies the deterioration of the tribe's socioeconomic conditions since termination, and the depressed socioeconomic status of the tribe's members, we would have no objection if Congress chooses to enact legislation restoring the Federal trust relationship to the Ponca Tribe of Nebraska. We do, however, have a number of technical amendments to the bill that are discussed in an attachment to this report.

The Office of Management and Budget has advised there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

EDDIE F. BROWN, *Assistant Secretary.*

Enclosure.

CHANGES IN EXISTING LAW

In compliance with subsection 12 of rule XXVI of the Standing Rules of the Senate, the Committee states that enactment of S. 1747 will not result in any changes in existing law.

TECHNICAL AMENDMENTS TO S. 1747

Section 5 should specify a geographical service area since most Federal benefits are available to members on or near the reservation. The bill should be amended to read:

On page 4, line 4, after "members" insert "residing on or near the former Ponca Reservation in Knox and Boyd Counties."

Section 7(c) should be amended to delete reference to the bylaws as that term is no longer appropriate.

On page 5, lines 16 and 17, after "Tribe," delete ", and the bylaws adopted under that constitution,."

Section 8. (a) appearing on pages 5 and 6, and commencing at line 20 should be amended to read as follows:

> Section 8. (a) Upon the completion of the tribal membership roll and upon the written request of the Interim Council, the Secretary shall conduct, by secret ballot, an election to adopt a constitution for the tribe. Such constitution shall be submitted by the Interim Council to the Secretary no later than one (1) year following the date of the enactment of this Act. Absentee balloting shall be permitted regardless of voter residence. In every other regard,

the election shall be held according to section 16 of the Indian Reorganization Act of June 18, 1934 (48 State. 984), as amended.

Section 8. (b) Not later than one hundred and twenty days (120) after the tribe adopts a tribal constitution, the Secretary shall conduct an election by secret ballot for the purpose of electing tribal officals as provided in the constitution. Said election shall be conducted according to the procedures stated in paragraph (a) of this section except to the extent that said procedures conflict with the tribal constitution.

Section 8(c) should be deleted in its entirety since it is erroneous. The Ponca Tribe of Nebraska did not cast a negative vote against the Indian Reorganization Act of 1934 and did, in fact, organize and adopt a constitution and charter pursuant to its provisions.

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